

# 11. ENVIRONMENTAL PERMITS

## 11.1 Introduction

### 11.1.1 Background

In the 1970s, Congress passed or amended a number of environmental protection statutes, beginning with the Clean Air Act (CAA) in 1970 and the Federal Water Pollution Control Act [renamed the Clean Water Act (CWA)] in 1972. For the protection of groundwater, Congress enacted the Safe Drinking Water Act (SDWA) in 1975. With the passage of the Resource Conservation and Recovery Act (RCRA) in 1976, the Federal government had, for the first time, a complete suite of statutes intended to reverse the degradation of the environment caused by discharges to air, water, and soil. Each of these statutes relies heavily on permitting programs to establish minimum national standards for the control of air and water effluents, as well as to govern the treatment, storage, and disposal of solid and hazardous waste. In order to avoid duplicative permitting and regulatory programs (many states had environmental programs preceding Federal involvement), the U.S. Environmental Protection Agency (EPA) has delegated the administration of the CAA, CWA, SDWA, and RCRA regulatory programs to states that adopt, at a minimum, the technical and administrative requirements found in Federal regulations.

It is common for DOE facilities to have environmental permits covering emissions from air pollution sources, water discharges to streams and municipal Publicly-Owned Treatment Works (POTWs), and the treatment, storage, or disposal of solid and hazardous waste. Any time DOE property is transferred, the transfer of environmental permits must be managed in accordance with applicable Federal and state regulations. These regulations vary in detail, depending on the environmental program (air, water, or solid and hazardous waste) and issuing authority (state or Federal). The following sections cover the Federally-mandated requirements that are tied to the various permits a DOE facility may have in force at the time of the real property transfer. This chapter incorporates the material from the EH-41 RCRA Information Brief,

*Transfer of Environmental Permits After the Sale or Transfer of DOE Property.*

### 11.1.2 Types of Environmental Permits

When DOE transfers property, there are several types of environmental permits that have to be modified, transferred, or terminated:

- CAA permits covering air emission sources.
- CWA National Pollutant Discharge Elimination System (NPDES) permits for discharges to surface water.
- CWA Section 404 permits for the management of dredge and fill materials.
- CWA Section 405 permits for the use and disposal of domestic sewage sludge.
- SDWA Underground Injection Control (UIC) permits for discharges to groundwater.
- RCRA treatment, storage, and disposal (TSD) facility permits for the management of hazardous waste.

## 11.2 Drivers for the Requirements

### 11.2.1 Clean Air Act

Originally passed in 1950 to control the dirty, particulate-filled air that plagued many industrial cities (e.g., Pittsburgh), the Clean Air Act of 1970 brought major amendments that established National Ambient Air Quality Standards for sulfur dioxide, ozone, particulates, carbon monoxide, nitrogen dioxide, and lead. It established emission limits for seven hazardous air pollutants: arsenic, asbestos, benzene, beryllium, mercury, radionuclides, and vinyl chloride. In 1990, the Clean Air Act Amendments brought 189 toxic substances under regulation and required the installation of Maximum Achievable Control Technology for certain sources.

The authority to permit pollution sources under the CAA is generally delegated to authorized states that have equivalent, or more stringent, emission

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standards and administrative requirements. All DOE facilities discharging effluents subject to the CAA permitting requirements are required to have either a state- or Federally-issued permit.

### 11.2.2 Clean Water Act

The CWA of 1972 has its origins in the Rivers and Harbors Act of 1899. Although amended several times prior to 1972, it was the CWA that established the discharge limit provisions [Section 301(a)] and water quality standards [Section 301(b) and 302] that provide the foundations for the water pollution control program in place today. Discharge (including stormwater discharge) permits, issued as part of the National Pollution Discharge Elimination System (NPDES), set enforceable limitations on pollutants discharged from point sources (outfalls). Other water-related activities such as dredging and filling (Section 404) and the disposal of sewage treatment plant sludge (Section 405) are regulated through permitting programs that are operated under the authority of the CWA.

Permit programs under the CWA are delegated to authorized states that oversee permitting and enforcement of CWA provisions.

### 11.2.3 Safe Drinking Water Act

Passed in 1975 and amended in 1986, the SDWA covers the protection of groundwater and drinking water sources. The major thrust of the law establishes drinking water standards: primary standards -- covering maximum contamination levels to protect human health, and secondary standards -- governing color, taste, smell, or other physical characteristics. The permit program that most concerns this guidance is the regulation of the injection of toxic chemicals to protect groundwater.

### 11.2.4 Resource Conservation and Recovery Act

Although it addresses the management of all solid waste, RCRA is best known as the law that governs the treatment, storage, and disposal of hazardous waste (Subtitle C). Through a cradle-to-grave management system, RCRA regulates hazardous waste from the moment it is generated until its final disposal. EPA administers RCRA through a detailed set of regulations that include complex permitting requirements for all hazardous waste

treatment, storage, and disposal facilities. Federal RCRA authorities are delegated to qualifying (i.e., authorized) states that have regulations similar to, or more stringent than, those of EPA.

## 11.3 Requirements in Real Property Transfers

### 11.3.1 CAA Permits

Although state programs may differ, the transfer of ownership or operational control of an emissions source requires that the applicable operating permit be transferred using simple administrative permit amendment procedures so long as:

- (1) The permitting agency determines that no other changes in the permit are necessary, and
- (2) A written agreement (containing the specific date for the transfer of permit responsibility, coverage, and liability) between DOE and the new permittee has been submitted to the permitting agency [40 CFR 70.7(d)(1)(iv)].

Using administrative permit amendment procedures, the change requested may be implemented as soon as the request is submitted [40 CFR 70.7(d)(3)(iii)]. The permitting agency is required to take no more than 60 days from the receipt of a request for an amendment to take final action on the request and to submit a copy of the revised permit to the EPA Administrator [40 CFR 70.7(d)(3)(I) and (iii)].

See the text box on the following page for CAA conformity determinations.

### 11.3.2 CWA Permits

An automatic transfer procedure may be utilized when DOE is transferring a NPDES permit issued under the CWA so long as:

- (1) DOE notifies the Director of the state permitting agency at least 30 days in advance of the proposed transfer date;
- (2) The notice includes a written agreement between DOE and the new permittee containing a specific date for transfer of

**CAA Conformity Determinations**

The CAA requires that Federal actions are determined to conform to the host State Implementation Plan (the plan that provides for implementation, maintenance and enforcement of air quality standards). Exempt from a conformity determination are those Federal actions that would result in no emissions increase or an increase in emissions that is clearly negligible. This exemption includes transfers of ownership, interests, and titles in land and facilities, regardless of the form or method of the transfer [40 CFR 51.853(c)(2)(xiv)]. However, it should be noted that if the real property transfer is associated with a proposed project, that proposed project may be subject to a conformity determination. A conformity determination would normally be integrated within NEPA review, and only applies in areas that are not in attainment with air quality standards, and does not apply to actions already subject to air permitting. The conformity provisions of the CAA can be found in 40 CFR Parts 51 and 93.

permit responsibility, coverage, and liability; and

- (3) The Director of the state permitting agency does not notify DOE that the state wishes to modify or revoke and reissue the permit.

If no notice of intent to revoke and reissue the permit is received from the state, the transfer becomes effective on the date specified in the written agreement between DOE and the new permittee [40 CFR 122.61(b)(1)-(3)].

If the Director of the state permitting agency wishes, the NPDES permit transfer may be initiated as a minor permit modification with DOE's consent so long as:

- (1) The Director determines that no other change in the permit is necessary, and
- (2) A written agreement between DOE and the new permittee containing a specific date for transfer of permit responsibility coverage and liability has been submitted to the Director [40 CFR 122.63(d)].

Procedures for transferring dredge and fill permits issued under Section 404 of the CWA are

developed by the Director of the state permitting agency. Abbreviated procedures to modify a permit for a change in ownership or operational control may be used provided the two conditions of the proceeding paragraph have been met [40 CFR 233.36(c)(2)].

Transferring a domestic sewage sludge permit issued under Section 405 of the CWA involves the same requirements as the transfer of a NPDES permit, although some state programs may not provide for minor permit modifications. Should this be the case, the permitting agency may require submission of an updated permit application to transfer the permit to a new owner or operator [40 CFR 505.15(b)(12), 505.15(c)(1), 505.15(d)(2), 505(e)(3)].

### **11.3.3 Underground Injection Control (UIC) Permits Issued Under the SDWA**

UIC permits may be transferred to new owners or operators using the exact procedures outlined above for NPDES permit transfers, except that the required notice to the permitting agency must demonstrate that the new permittee is financially responsible and has sufficient resources to close, plug, and abandon the underground injection operation in the manner prescribed by the permitting agency [40 CFR 144.38, 144.39(b)(2), 144.41(d), and 144.52(a)(7)]. Underground injection wells located in States without approved UIC programs are required to have RCRA permits. In such cases, transfer procedures for an interim UIC permit for a hazardous waste injection well are identical to the requirements applicable to the transfer of a RCRA permit [40 CFR 270.1(c)(1), 270.64].

### **11.3.4 RCRA Permits**

The transfer of RCRA permits is accomplished by notifying the permitting agency in accordance with 40 CFR 270.40. The permitting agency may require modification of the permit or its revocation and reissuance [40 CFR 270.30(k)(3)].

Modification of a RCRA permit to transfer it to a new owner or operator, or to add an operator, is a Class 1 modification that requires:

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- Getting prior written approval from the permitting agency in accordance with 40 CFR 270.42;
- Submitting a revised permit application no later than 90 days prior to the scheduled change;
- Submitting a written agreement containing a specific date for transfer of permit responsibilities between DOE and the new permittee to the permitting agency; and
- Continuing to comply with the requirements of 40 CFR 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated to the permitting agency that the new owner or operator is complying with that subpart [40 CFR 270.40(b)]. (Although DOE is exempt from the financial requirements of 40 CFR 264, Subpart H, as are all Federal agencies, DOE must be financially responsible for the site until the new owner or operator has demonstrated to the permitting agency that the permittee is in compliance with 40 CFR 264, Subpart H.).

Revocation and reissuance of a permit allows the permitting agency to incorporate any new requirements that may become necessary under RCRA [40 CFR 270.30(k)(3)]. When the permitting agency decides to revoke and reissue, the entire permit is reopened, subject to revision, and reissued for a new term [40 CFR 270.4].

RCRA facilities operating under interim status that undergo a change in ownership must:

- Submit a revised Part A permit application no later than 90 days prior to the scheduled change, and
- Continue to comply with the requirement of 40 CFR 265, Subpart H (Financial Requirements) until the new owner or operator has demonstrated to the permitting agency that the new owner or operator is complying with that subpart [40 CFR 270.72(a)(4)].

In the event that the new owner or operator is not exempt from the Subpart H financial requirements, the new owner or operator is required to demonstrate compliance with Subpart H financial requirements within 6 months of the change in ownership or operational control of a permitted or interim status TSD facility. DOE may be held liable for the costs of closure, post-closure care, and sudden and nonsudden accidental occurrences until the new owner or operator can make the required demonstration. [40 CFR 264.143, 264.145, and 264.147 for permitted facilities, and 265.143, 265.145, and 265.147 for interim status facilities]. For that reason, the financial viability of a new owner or operator should be of particular concern to DOE.

### 11.4 Implementation of Permit Transfer

If a new owner or operator plans to continue operations at the facility being transferred in the same manner as if DOE owned and operated the facility, the transfer process should be as described in Section 11.3 for each type of permit. However, there are probably few cases where a change in ownership will not lead to major changes in facility operation.

It is a best management practice for DOE to evaluate the operations planned by the new owner or operator before adopting the assumption that a simple notice to the regulators will effect a permit transfer. Where the DOE facility will be put to different use by the new owner or operator, it should be assumed that more involved permitting activities will be required (i.e., revocation and reissuance). Each permit that is revoked to be modified and reissued will undergo a process that includes a public comment period -- a process certainly more involved than a simple administrative change. Even if there are no objections to the permit transfer, the reissued permit may contain additional or more severe regulatory requirements (e.g., reductions in allowable discharges through NPDES outfalls). At best, these more involved permit modifications may delay a transaction, or at worst, if permitting contingencies are included in the contract, they may end the transaction because the new owner cannot or chooses not to meet the additional or more severe

regulatory requirements imposed in the proposed permit.

In many cases the new owner or operator will not continue operating all (or, perhaps, any) of the facilities that require environmental permits. Cessation of operation requires that DOE notify the appropriate regulatory agency that permitted activities will cease and that, where applicable, closure plans will be executed.

### **11.5 Relationship to the Environmental Baseline Survey**

List in the Environmental Baseline Survey (discussed in Chapter 12) all environmental permits that are in effect at the DOE facility along with the activities that they cover. Also list all discharge limitations and other applicable permit requirements for reference purposes.

### **11.6 Relationship to NEPA Documents**

A draft EIS prepared for a proposed land transfer must include a list of all Federal permits, licenses, and other entitlements that must be obtained in implementing the proposal (40 CFR 1502.25(b)) (discussed in Chapter 13). A NEPA document prepared for a proposed real property transfer should also discuss discharge limitations and permit conditions for facilities under DOE ownership as compared to the new uses to which the facility will be put upon transfer. Environmental impacts due to changes in discharge volumes and constituents are of major concern to stakeholders in the NEPA process, as are changes in the types and volumes of hazardous waste generated and managed by the new owner or operator.

### **11.7 Checklist**

- ☐ If the subject facility has a CAA permit that will be transferred to the new owner or operator, has:
  - The permitting agency been notified by DOE that a transfer is anticipated?
  - A written agreement (containing a specific date for transfer of the permit responsibility, coverage, and liability) between DOE and the new permittee been included with the notification?
- ☐ If it is necessary for the subject facility to transfer a NPDES permit for continued operations, has:
  - The permitting agency been notified by DOE at least 30 days prior to the proposed transfer date?
  - A written agreement (containing a specific date for transfer of the permit responsibility, coverage, and liability) between DOE and the new permittee been included with the notification?
- ☐ In some states, the transfer may constitute a minor permit modification. If the subject facility is in such a state, has a notice been provided to the permitting agency that includes a written agreement (containing a specific date for transfer of the permit responsibility, coverage, and liability) between DOE and the new permittee?
- ☐ If a RCRA permit is to be transferred, has:
  - A revised permit application been submitted no later than 90 days prior to the scheduled change?
  - A written agreement (containing a specific date for transfer of permit responsibilities) between DOE and the new permittee been submitted?
- ☐ If the subject facility has a UIC permit that must be transferred to allow continued operation, have the exact same procedures outlined above for NPDES permit transfers been followed for the UIC permit?
- ☐ In addition to following the NPDES procedures for a UIC permit, does the required notice to the permitting agency demonstrate the new permittee's financial responsibility and resources to close, plug, and abandon the underground injection operation in the manner prescribed by the permitting agency?

### **11.8 References**

DOE, 1995. *Transfer of Environmental Permits After the Sale or Transfer of DOE Property*, RCRA Information Brief, EH-413-061/1195, U.S. Department of Energy, Office of Environmental Policy and Assistance, RCRA/CERCLA Division, EH-413, November 1995.